

The State-Tribal Legal Relationship: The Big Picture^{*}
Tribal Relations Training, Helena
December 11, 2008

INTER-GOVERNMENTAL AGREEMENTS

- I. State-Tribal Cooperative Agreements Act, § 18-11-101 – 112. Covers (1) “mutually beneficial activities and services,” and (2) tax revenue sharing.
 - A. Human Services
 - (1) Title IV-E Foster Care
 - (2) MTUPP
 - (3) TANF
 - (4) LIHEAP
 - (5) WIC
 - (6) Medicaid Eligibility Determination
 - (7) Medicaid Administrative Match
 - (8) Emergency Preparedness
 - (9) Other contracts (HIV, Manpower, etc.)
 - B. Transportation Infrastructure
 - (1) TERO MOUs/Highway Construction PSAs
 - C. Tax Revenue Sharing
 - (1) Motor Fuel – *see also* §§ 15-70-234 – 236, MCA (requires review by the Revenue and Transportation interim legislative committee)
 - (2) Alcohol
 - (3) Tobacco
 - (4) Oil and Natural Gas
 - D. Fish and Wildlife Management
 - (1) MOU with CSKT, joint management and licensing agreement
 - (2) MOU with Fort Peck, joint technical committee which develops fish and wildlife management recommendation for state and tribal governments

^{*} Prepared by Andrew Huff, Attorney, Governor’s Office. This document is an overview and is not intended to be an exhaustive list of all agreements, legislative initiatives and legal cases.

II. Water Compacts, 43 U.S.C. § 666 (a)(1); § 2-15-121, MCA; §§ 85-20-201, *et seq.*, MCA.

A. Compacts in place (ratified by the State, Congress and the Tribe)

- (1) Fort Peck
- (2) Chippewa Cree
- (3) Northern Cheyenne

B. Pending Compacts

- (1) Crow (ratified by State, pending in Congress)
- (2) Fort Belknap (ratified by State)
- (3) CSKT (under negotiation)
- (4) Blackfeet (before state legislature for ratification 2009 session)

III. Gaming Compacts, 15 U.S.C. § 471; 25 U.S.C. §§ 2701, *et seq.*; Montana Constitution, Art. 3, Sections I and IX; §§ 23-5-110, *et seq.*; §§ 16-1-101, *et seq.*, MCA.

A. Class III Compacts in place (signed by Tribal Chair, Governor, Attorney General, U.S Department of Interior, published in Federal Register)

- (1) Fort Belknap
- (2) Fort Peck
- (3) Crow
- (4) Chippewa Cree
- (5) Northern Cheyenne

IV. Economic Development

- A. Indian Country Economic Development contracts, HB 2
- B. Workforce MOU – One-Stop Delivery System, Workforce Investment Act, 29 U.S.C. §§ 2801, *et seq.*
- C. Treasure State Endowment Program, §§ 90-6-701, *et seq.*, MCA.
- D. Coal Board grants, §§ 90-6-201, *et seq.*, MCA.

V. Recurring Issues

- A. Waiver of immunity.
- B. Dispute resolution, venue.
- C. §§ 18-1-401, MCA. Contract actions.

SELECTED STATE STATUTES SPECIFIC TO TRIBES

- I. The Government-to-Government Relationship, §§ 2-15-141–149, MCA.
 - A. Guiding Principles for state-tribal interaction
 - (1) cooperation, collaboration
 - (2) mutual understanding and respect
 - (3) regular and early communication
 - (4) accountability
 - (5) preservation of the state-tribal relationship
 - B. Training and Consultation
 - (1) Annual training for state employees
 - (2) Annual report on state-tribal activities
 - (3) Annual meeting with tribal leaders
- II. Office of the Coordinator of Indian Affairs, § 2-15-217, MCA; §§ 90-11-101, *et seq.*
 - A. Legislative policy
 - (1) “the state and the tribes working together in a government-to-government relationship and engaging in compacts and other cooperative agreements for the benefit of Indian and non-Indian residents will promote economic development, environmental protection, education, social services support, and enduring good will”
 - B. Coordinator’s duties
 - (1) meet quarterly; meet with agencies on issues; report to cabinet; advise; liaison; boards and committees
- III. State-Tribal Cooperative Agreements Act, §§ 18-11-101, *et seq.*, MCA.
- IV. Hiring preference for state construction projects on the reservation, § 18-1-110, MCA.
- V. Water Compacts, §§ 85-16-201, *et seq.*
- VI. State-Tribal Economic Development Commission, §§ 90-1-131 – 135, MCA.

- VII. Jurisdiction on Indian Lands, §§ 2-1-301 – 307, MCA.
- A. Implements PL 83-280 on the Flathead reservation. Allows for assumption of partial state civil and criminal jurisdiction.
 - B. In Montana, PL 83-280 applies only to the Flathead Reservation, and the limits of its application are defined in (1) a 1965 tribal ordinance defining the terms and limits of PL 83-280 jurisdiction; (2) SB 368, a 1993 statute allowing for partial retrocession of civil jurisdiction from the state to the Tribes; (3) a 1994 law enforcement cooperative agreement between CSKT, the State of Montana Flathead, Lake, Missoula and Sanders counties, and the cities of Hot Springs, Ronan, St. Ignatius.
- VIII. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member, § 16-11-111, MCA.
- IX. Cooperative Agreement – motor fuels. §§ 15-70-234 – 236, MCA.
- X. Montana Procurement Act, §§18-4-401— 407, MCA, provides for cooperative purchasing and other agreements with tribal governments.
- XI. Human Skeletal Remains and Burial Site Protection, §§ 22-3-801 – 811, MCA.
- XII. Repatriation of Human Remains and Funerary Objects, §§ 22-3-901 – 921, MCA.
- XIII. American Indian Monument and Tribal Circle of Flags, §§ 22-2-601 – 602, MCA.
- XIV. Traditional Arts and Crafts Account, § 22-2-701, MCA. For the purchase of pieces by American Indian master artists.